IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2531 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ..Applicant

Versus

Uttam Sitaram Kolhe & 2 Ors. ..Respondents

Mr.S.R.Borulkar PP with K.V.Saste APP for the applicant/State.

Coram : J.N.Patel &
R.S.Mohite,JJ

Date : 17.01.2007.

PC

1. Heard.

2. The State has sought leave to prefer an appeal challenging the Judgment and order dated 12.01.2006 under which the IVth Ad-hoc Additional Sessions Judge, Nashik, acquitted the accused persons in Sessions Case No.60 of 2004, who have been charged for having committed offences under Sections 302, 201 read with 34 of IPC.

3. It was the prosecution case that the deceased Gangadhar, the original accused no.1 Uttam and others were residing together and that there was a transaction between Gangadhar and accused Uttam relating to purchase of motor cycle. Gangadhar

purchased the motor cycle out of the loan taken for agricultural purpose which was not repaid. Because of which, Gangadhar was humiliated. On 11.10.2003 at about 8.00 A.M. deceased Gangadhar alongwith his wife were present in the house situated in the field. Gangadhar told his wife Alka the complainant that he was going to Saptashrungi Gad alongwith Uttam for darshan of Saptashrungi Godess. On that day only accused Uttam returned home but Gangadhar did not come. Therefore, on the next day the Complainant went to the parents' house and from there accompanied with a brother, she went to Saptashrungi Gad in search of Gangadhar and was informed by certain persons that Gangadhar has fallen down in the valley which aroused suspicion in the mind of wife of the deceased i.e. Alka that the original accused Uttam, Yashwant Kunwar and Subash Kolhe might be responsible for his death and therefore, lodged a complaint against the accused at Abhona police station which was registered at Crime No.60/2003 and offence under Sections 302, 201 r/w 34 of IPC came to be registered against the accused persons.

4. During the trial though prosecution examined as many as 8 witnesses, the trial Court found that the evidence led by the prosecution does not establish that in furtherance of their common intention the accused persons committed the murder of deceased

Gangadhar by intentionally causing death and that his body was thrown in order to cause dis-appearance of Gangadhar and acquitted the accused persons.

5. The learned APP submitted that the trial Court has failed to take into consideration the circumstances, such as the deceased was last seen with the accused persons and ultimately found dead. Further the evidence of discovery of stone at the behest of accused Uttam has been dis-believed without any justification. It is submitted that the prosecution has brought on record that the accused had sufficient motive to commit murder of Gangadhar as they were not in good terms over purchase of motor cycle by Gangadhar instead of returning the loan taken for agricultural purpose and therefore, the order of acquittal passed by the learned Judge is bad in law and the same is liable to be quashed and set aside.

6. We have gone through the evidence of the prosecution witnesses and the reasons given by the trial Court for passing order of acquittal. We find that the trial Court has discussed each and every witness examined by the prosecution in proper perspective. In so far as complainant is concerned, her evidence is totally on the basis of suspicion she had against the accused persons. The trial Court was justified in holding that mere recovery of

the stone from an open place was not sufficient to hold that the stone was used for causing his death as no blood stains were found on the said stone. Therefore, in our view, the trial Court was justified in acquitting the accused persons for want of evidence to connect them with the crime. Therefore, there is no reason to interfere with the judgment and order of acquittal. Application to seek leave is rejected. As a consequence of which, the appeal is dismissed.

(J.N.Patel,J)

(R.S.Mohite,J)